

COMPLIANCE BOARD OPINION NO. 95-4

August 14, 1995

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The Open Meetings Compliance Board has considered your complaint alleging that a violation of the Open Meetings Act ("the Act") occurred at a meeting of the Maryland Association of Election Officials ("MAEO") on June 20, 1995. The gist of your complaint is that quorums of election boards from throughout the State participated in the closed session, which you contend was held in violation of the Act. The closed nature of the session was evidenced, you point out, by the fact that a police officer, acting on the instructions of the President of MAEO, excluded from the meeting room members of the public who wished to attend.

The Compliance Board received responses from nearly all election boards in the State. The Compliance Board also received a letter from MAEO itself describing the events at the closed session. From these materials, the Compliance Board has learned that the closed session lasted approximately one hour and 15 minutes. The session was closed because MAEO feared that some members of the public were planning to disrupt the organization's proceedings. Therefore, although MAEO's practice is ordinarily to allow public attendance at its sessions, the Association decided to restrict the portion of its session beginning at 2:00 p.m. to Association members only. A police officer enforced that decision.

Both MAEO itself and the election boards in attendance confirm that the only subject presented to the MAEO membership and discussed by them during the closed session was the election of the Association's officers. Of the election boards present at the MAEO meeting, none reported a separate board meeting of any kind.

The Open Meetings Act applies to the "meetings" of a "public body." A "public body" is "an entity that ... consists of at least two individuals and ... is created by" governmental action in one of several enumerated ways. §10-502(h) of the State Gov't Art., Md. Code.¹

¹ The enumerated sources of governmental action are the Maryland Constitution; a State statute; a county charter; an ordinance; a rule, resolution, or by-law; an executive order of the Governor; an executive order of the chief executive authority of a political subdivision of the State; or any instrument of appointment by the Governor or the chief executive authority of a political subdivision.

The Maryland Association of Election Officials is not a "public body." The Association was not created by any of the means listed in the statute. Rather, it is a private, voluntary organization of election personnel. It is not subject to the Open Meetings Act.

By contrast, election boards are created by State statute and are, therefore, "public bodies." Hence, we next consider whether any election board held a meeting. The term "meet" means "to convene a quorum of a public body for the consideration or transaction of public business." §10-502(g).

To the extent that a quorum of any given election board was not present at the MAEO meeting, that board could not possibly have violated the Act. In determining a quorum, the presence of staff members of a board is immaterial; only the presence of board members or substitute members matters. At least eleven local boards had no quorum present (Caroline, Carroll, Calvert, Cecil, Charles, Dorchester, Kent, St. Mary's, Somerset, Talbot, and Worcester). At least one other county (Harford) had a majority of board members in attendance at the MAEO meeting, but they did not sit together at the 2:00 session and, therefore, did not constitute a quorum.

Several local boards reported that a quorum of their members were present at the MAEO session, but that fact alone does not mean that those boards were holding a "meeting." If a particular board was not itself engaged in "the consideration or transaction of public business," then that board did not hold a meeting. As the Court of Special Appeals recently held, members of a public body do not violate the Act merely by attending a meeting of an entity that is not itself subject to the Open Meetings Act, even if the topic of discussion relates directly to a matter before the public body. *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157 (1994). The crucial point was that the Act applies only if the public body itself separately conducts public business, as distinct from the proceedings of the larger group. If interaction among the members of the public body does not occur, and the larger group is not a mere subterfuge to evade the law, no violation occurs. *See also* Compliance Board Opinion No. 94-9 (November 15, 1994).

The Compliance Board has no evidence whatever that any such separate conduct of public business by individual boards occurred at the MAEO meeting. All boards present at the session expressly denied any separate discussion.²

² The Montgomery County Board reported that "during the course of the MAEO election, there was a lull in the formal proceedings while the voting was conducted at tables in the rear of the room. During this period, one or more members of the board spoke to one another or to other members of MAEO, as a matter of courtesy or to pass the time, but those conversations were simply incidental and were not about the public business of the board." The Act does not apply to a "social gathering" of this kind. §10-503(a)(2).

In short, no public body held a meeting as part of the MAEO session on June 20. The fact that a quorum of various election boards was present is insufficient to make the Act applicable. Just as in the *Ajamian* case, the board members did not deliberate as a body on any matter of public business. Indeed, this case is even clearer than *Ajamian*, for here the topic before the larger group did not touch on the "public business" in any way. The public has no interest in the election of MAEO officers. The gathering of election board members to conduct this private group's election involved no "meeting" under the Act and, albeit held behind closed doors, was unquestionably "an occasion that is not intended to circumvent" the Act. §10-503(a)(2). In the opinion of the Compliance Board, there was no violation.

In closing, the Board takes note of your contention, presented in correspondence with the Compliance Board's counsel, that the Board "should not take [election officials'] word for it as to what they may have discussed, as they could prepare any official story after the fact." Obviously, whenever a closed session occurs, only the people who were there know for certain what went on. But this inescapable fact does not lead the Compliance Board to an impermissible cynicism about the activities of public officials. Here, separately prepared responses from election boards all over the State give a clear picture of what went on behind closed doors: the election of MAEO officials, and nothing else.

OPEN MEETINGS COMPLIANCE BOARD

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